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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE: 23ANDME, INC. CUSTOMER
DATA SECURITY BREACH LITIGATION**

Case No.: 3:24-md-03098-EMC

This Document Relates to:

ALL ACTIONS

**AFFIDAVIT OF EDUARD KORSINSKY
IN SUPPORT OF INTERVENING
CLAIMANTS' MOTION TO INTERVENE
AND IN OPPOSITION TO
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

I, Eduard Korsinsky, hereby declare under penalty of perjury pursuant to 28 U.S. Code § 1746, that the following is true and correct to the best of my knowledge:

1. In October 2023, 23andMe announced a security incident that exposed the genetic, genealogical, and personally identifiable information of 6.4 million customers ("Data Breach"), whereby 23andMe had become aware that numerous customer profiles were accessed by unauthorized third-party threat actors.¹

2. Following its announcement of the Data Breach, on November 30, 2023, 23andMe updated its Terms of Service. The update included changes to the Dispute Resolution and

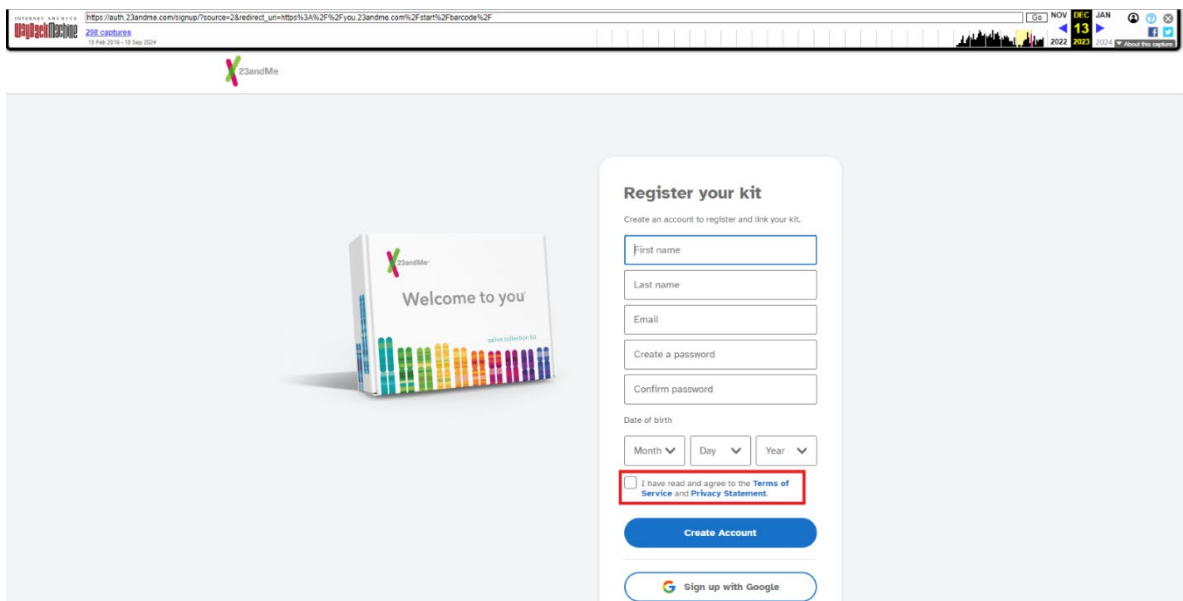
¹ Form 8-K/A, Amendment 1, 23ANDME (Oct. 10, 2023) <https://investors.23andme.com/static-files/812ac089-e9d0-4618-a6cf-0a5fa3b723fd> (last visited October 1, 2024).

Arbitration sections and governing arbitration provider – from JAMS to NAM – in the Terms of Service.

3. 23andMe's Terms of Service for all customers, effective October 3, 2023, included Dispute Resolution and Arbitration sections and provided that JAMS would be the governing arbitration provider.

4. Levi & Korsinsky's communication with 23andMe began on December 29, 2023.

5. In December 2023, when consumers visited 23andMe's Website to register their 23andMe kit, they were initially prompted to create an account with 23andMe. In support of Levi & Korsinsky's Motion to Intervene and Object, I reviewed and captured images from 23andMe's website at <https://www.23andme.com/> showing the presentation of 23andMe's Terms of Service on December 13, 2023 as shown in *Figure 1*, below. *Figure 1* demonstrates that 23andMe had a clickwrap agreement in place in December 2023, when JAMS Claimants first initiated their arbitrations.

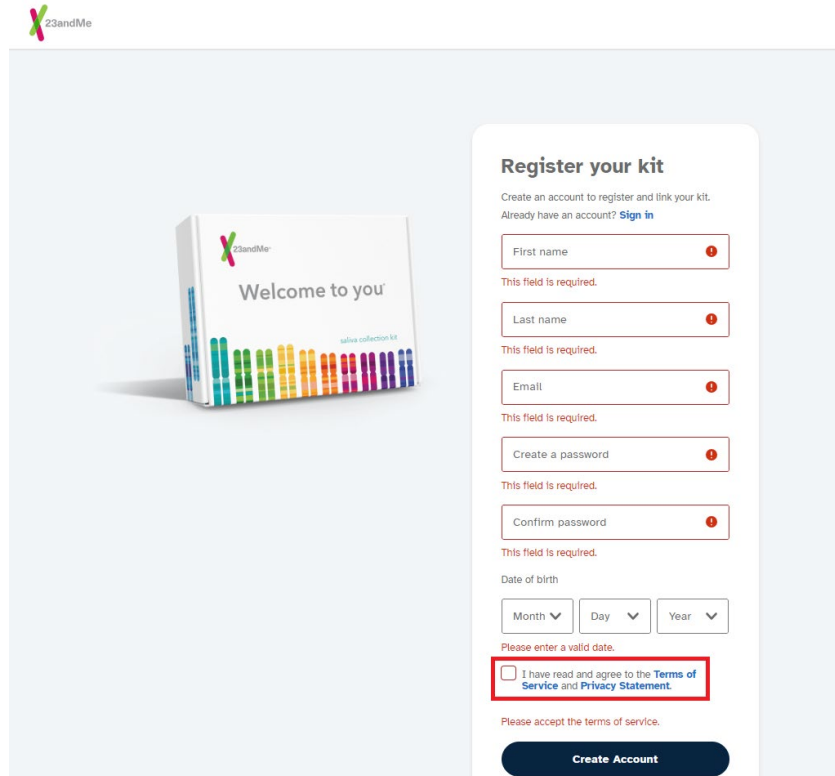


*Figure 1*²

6. 23andMe's Terms as of September 1, 2024, and today, consumers who visit 23andMe's Website to register their 23andMe kit, are prompted to create an account in an identical

² 23andMe, WAYBACK MACHINE (Dec. 13, 2023), https://web.archive.org/web/20231213063454/https://auth.23andme.com/signup/?source=2&redirect_uri=https%3A%2F%2Fyou.23andme.com%2Fstart%2Fbarcode%2F (last visited October 1, 2024).

process as described above. In support of Intervening Claimants' Motion to Intervene and in Opposition to Preliminary Approval of Class Action Settlement, I reviewed and captured images from 23andMe's website at <https://www.23andme.com/> showing the presentation of 23andMe's Terms of Service on September 1, 2024 as shown in *Figure 2*, next page.



*Figure 2*³

7. 23andMe's updated Terms of Service became effective November 30, 2023. (the "NAM Terms").⁴

8. 23andMe emailed its customers, notifying them of the change, stating:

On November 30, 2023, we launched updates to our Terms of Service. Important updates were made to the Dispute Resolution and Arbitration section to include procedures that will encourage a prompt resolution of any disputes and to streamline arbitration proceedings where multiple similar claims are filed. These updates will go into effect for customers 30 days from the date this email is received. We encourage you to read the new terms in full. Please notify us within 30 days of receiving this email if you do not agree to the terms, in which *case you*

³ 23andMe, WAYBACK MACHINE (Sept. 4, 2024)

https://web.archive.org/web/20240904122042/https://auth.23andme.com/signup/?source=2&redirect_uri=https%3A%2F%2Fyou.23andme.com%2Fstart%2Fbarcode%2F (last visited October 1, 2024).

⁴ 23andMe, WAYBACK MACHINE (Sept. 3, 2024)

<https://web.archive.org/web/20240903232503/https://www.23andme.com/legal/terms-of-service/> (last visited October 1, 2024)

1 *will remain subject to the current Terms of Service.* If you do not notify us within
2 30 days, you will be deemed to have agreed to the new terms. If you have any
 questions, please contact us at customercare@23andme.com.

3 9. Pursuant to 23andMe’s email notification to its customers, on December 29, 2023,
4 Levi & Korsinsky LLP (“Levi & Korsinsky”) provided 23andMe with an opt-out notification for
5 1,481 clients who had retained Levi & Korsinsky to represent them in relation to the Data Breach
6 (“JAMS Claimants”).

7 10. The JAMS Claimants represent 1,481 of the more than 11,000 noticed claimants
8 represented by my firm.

9 11. On January 11, 2024, Levi & Korsinsky provided notice on behalf of 1,481 JAMS
10 Claimants under the JAMS Terms, and 414 Claimants under the NAM Terms (“NAM Claimants”).
11 Intervening Claimants conveyed their willingness to engage with 23andMe in working to resolve
12 each of the Intervening Claimants’ claims.

13 12. On February 10, 2024, 23andMe responded, arguing that there was no data breach,
14 along with other arguments related to the merits of Intervening Claimants’ claims.

15 13. 23andMe appeared to be engaged in the Initial Dispute Resolution process set forth
16 in 23andMe’s Terms.

17 14. On March 21, 2024, Levi & Korsinsky responded to 23andMe and provided
18 additional notices. The communication included a description of the nature of the claim or dispute
19 and the underlying facts of the Data Breach for each NAM Claimant, and the relief sought under
20 each of their respective state statutes.

21 15. 23andMe was provided with each NAM Claimant’s name, email address, and
22 physical mailing addresses for an additional 5,321 NAM Claimants. The notices were provided
23 in accordance with the NAM Terms.

24 16. Intervening Claimants reiterated their interest and availability to meet and confer,
25 as to scheduling conferences, compliance with 23andMe’s pre-arbitration dispute resolution
26 process, or address the defense lodged by 23andMe.

27 17. On April 11, 2024, 23andMe responded. It griped that certain Intervening
28 Claimants had not provided an email address associated with their 23andMe accounts in their pre-

1 arbitration notices. 23andMe asked, as part of the ongoing pre-dispute resolution process, that
2 updated email addresses for certain Intervening Claimants be verified and updated. 23andMe
3 stated its clear intention to continue to engage in the process and schedule times to confer.

4 18. As this exchange continued, we communicated with our clients both to obtain the
5 clarification in details sought by 23andMe and provide an update as we endeavored to schedule
6 conferences on their behalf.

7 19. On June 28, 2024, an additional 5,706 NAM Claimants provided notice to
8 23andMe. At the same time, the Intervening Claimants reiterated their readiness to proceed with
9 the individual settlement conferences – offering most days of July 2024 as available – to hold the
10 conferences and move the claims forward toward arbitration.

11 20. Without a response from 23andMe, on July 18, 2024, updated email addresses for
12 995 Intervening Claimants that 23andMe had previously claim it could not identify, confirm, or
13 associate with their 23andMe account. The Intervening Claimants reiterated their readiness to
14 proceed with the individual conferences – offering the remaining dates in July.

15 21. On July 26, 2024, 23andMe responded. It continued to question the email
16 associated with certain Interning Claimant's notices. It did not reference financial woes, or that
17 it did not intend to ultimately pay the arbitration fees to allow the arbitrations to move forward,
18 and no mention of a settlement or a preference to negotiate a class resolution (despite its
19 arbitration clause).

20 22. 23andMe still appeared to be engaged in the Initial Dispute Resolution process set
21 forth in 23andMe's Terms. It did not reference financial woes, or that it did not intend to
22 ultimately pay the arbitration fees to allow the arbitrations to move forward, and no mention of a
23 settlement or a preference to negotiate a class resolution.

24 23. With no communication from 23andMe in August, the Intervening Claimants
25 prepared for arbitration. By September 13, 2024, 884 JAMS Claimants were finalized and filed
26 with JAMS pursuant to 23andMe's JAMS Terms
27
28

24. On September 19, 2024, 23andMe submitted a letter to JAMS in response to Levi & Korsinsky's September 13, 2023 filing requesting a stay of the JAMS Claimants' arbitrations. See **Exhibit A**.

25. On September 24, 2024, 23andMe again updated its Terms of Service. 23andMe's updated Terms of Service still include an arbitration clause providing that NAM will be the arbitration provider for disputes.⁵

26. Attached hereto as **Exhibit B** is a true a correct copy of the Order regarding the Motion For Preliminary Approval of Class Settlement in the matter of *Rimler v. Postmates, Inc.*, No. CGC-18-567868 (Cal. Super. Ct., S.F. Cty. Nov. 26, 2019).

27. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 2, 2024
New York, New York.

By: /s/ Eduard Korsinsky
Eduard Korsinsky

⁵ *Terms of Service*, 23ANDME (Sept. 24, 2024) <https://www.23andme.com/legal/terms-of-service/> (last visited October 1, 2024).